

1 JUSTIN X. WANG (CSB #166183)
2 **BAUGHMAN & WANG**
3 111 Pine Street, Suite 1350
4 San Francisco, California 94111
5 Telephone: (415) 576-9923
6 Facsimile: (415) 576-9929
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8 Attorney for Plaintiffs
9 Stephen CHANG
10 Hongyan CHEN

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

Stephen CHANG
Hongyan CHEN

Plaintiffs,

Michael Chertoff, Secretary of the Department
of Homeland Security;
Robert S. Mueller,
Director of Federal Bureau of Investigation

Defendants.

) Case No.: C07-3562 SBA

) **JOINT CASE MANAGEMENT**
) **STATEMENT; AND [PROPOSED]**
) **ORDER**

) District Judge: Honorable Sandra B.
Armstrong

) DATE: October 18, 2007

) TIME: 2:30 a.m.

) Courtroom: via telephone

1. **Jurisdiction and Service:** All parties have been served. Plaintiff brought this complaint under the mandamus statute and under the Administrative Procedure Act. Defendants will argue that the Court lacks jurisdiction to compel the Federal Bureau of Investigations ("FBI") to act in this case.

2. **Facts:** On February 1, 2006, Plaintiff Hongyan Chen filed an I-485 application to adjust status to lawful permanent resident with the USCIS as beneficiary of the Form I-130 petition filed by Plaintiff Stephen CHANG. Plaintiffs were interviewed on this application by the San Francisco Office on May 17, 2006 and were informed after the interview that their case was pending security clearance, further review, and additional documents. In June 2006, Plaintiffs submitted the requested documents. At this time, the FBI name check appears to be the only reason for the delay in adjudication of Plaintiff Hongyan Chen's I-485 application. Plaintiff

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1 Hongyan Chen's I-485 application has now remained pending for more than one year and eight
2 months from the date of filing.

3 **3. Legal Issues:** The principal legal issue the parties dispute is whether the Court has
4 jurisdiction to compel agency action in this case; and if so, whether Defendants' delay is
5 unreasonable and not in accordance with the law.

6 **4. Motion:** Plaintiffs filed a motion for summary judgment on September 10, 2007, with a
7 October 16, 2007 hearing date. Defendants filed a motion to dismiss the FBI as defendant on
8 September 10, 2007, with the same hearing date as Plaintiffs' motion for summary judgment.
9 Plaintiffs filed their opposition to Defendants' motion to dismiss on September 25, 2007.
10 Defendants filed their reply in support of motion to dismiss and Ex Parte Application to
11 reschedule hearing on cross motions for summary judgment on October 2, 2007. Plaintiffs filed
12 their opposition to Defendants' Ex Parte Application to reschedule hearing on cross motions for
13 summary judgment on October 3, 2007.

14 **5. Amendment of Pleadings:** None.

15 **6. Evidence Preservation:** None.

16 **7. Disclosure:** The parties agree that this Court's review will be confined to the
17 administrative record and therefore this proceeding is exempt from the initial disclosure
18 requirements under Fed. R. Civ. P. 26.

19 **8. Discovery:** There has been no discovery to date and the parties believe this matter can be
20 resolved without discovery.

21 **9. Class Actions:** Not applicable.

22 **10. Related Cases:** None.

23 **11. Relief:** Plaintiffs ask that the Court direct the agency to adjudicate the adjustment of
24 status application within a reasonable time and asks for an award for attorney's fees.

25 **12. Settlement and ADR:** The parties have filed a Joint Request to Be Exempt From Formal
26 ADR on September 28, 2007. The CMC will be heard at 2:30a.m. via telephone on October 18,
27 2007. The cross motions for summary judgment and Defendants' motion to dismiss will be
28 heard at the same time on October 16, 2007.

1 **13. Consent to Magistrate Judge for All Purposes:** Plaintiff does not consent magistrate
2 judge.

3 **14. Other References:** None.

4 **15. Narrowing of Issues:** None.

5 **16. Expedited Schedule:** The parties believe this matter can be solved through motions.

6 **17. Scheduling:** The CMC will be heard at 2:30a.m. via telephone on October 18, 2007. The
7 cross motions for summary judgment and Defendants' motion to dismiss will be heard at the
8 same time on October 16, 2007.

9 **18. Trial:** The parties believe the matter can be solved through cross motions for summary
10 judgment if this Court denies Defendants' motion to dismiss.

11 **19. Disclosure of Non-party Interested Entities or Persons:** None.

12 **20. Such other matters as may facilitate the just, speedy and inexpensive disposition of**
13 **this matter:** None.

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16 Dated: October 5, 2007

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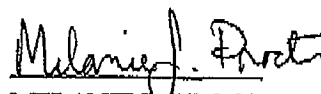
Respectfully submitted,

BAUGHMAN & WANG


JUSTIN X. WANG
Attorneys for Plaintiffs

Dated: October 5, 2007

SCOTT N. SCHOOLS
United States Attorney


MELANIE L. PROCTOR
Assistant United States Attorney
Attorneys for Defendants

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CASE MANAGEMENT ORDER

The Joint Case Management Statement and Proposed Order are hereby adopted by the Court as the Case Management Order for the case, and the parties are ordered to comply with this Order.

Dated:

SAUNDRA B. ARMSTRONG
United States District Judge